SUPREME COURT
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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 65

UNITED STATES OF AMERICA *ex rel.*
STEVE AVRAMOVICH,

Relator-Appellant,

vs.

JOHN M. LEHMANN,
Officer in Charge, Immigration and Naturalization Service,

Respondent-Appellee.

PETITION FOR RE-HEARING.

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UNITED STATES OF AMERICA *ex rel.*
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Relator-Appellant,

vs.

JOHN M. LEHMANN,
Officer in Charge, Immigration and Naturalization Service,
Respondent-Appellee.

PETITION FOR RE-HEARING.

Now comes the undersigned Henry C. Lavine, Attorney for the Petitioner, and presents this his petition for a re-hearing of the above-entitled cause, and in support thereof respectfully states that this Court denied the petition for certiorari filed in this case on the 16th December 1957, and therefore this petition for rehearing is timely.

We are prompted to file this Petition to bring to the attention of the Court the fact that on the 9th day of December, 1957, the Supreme Court, by a decision of 5 to 4, reversed the holding of the District and the Appellate Courts in the case of *Rowoldt vs. Perfetto*, No. 34, which was on the docket of this Court.

In November 1956, at the request of the Solicitor-General of the United States, this Court ordered that this case of Avramovich be held in abeyance until the decision by the Supreme Court in the said case of *Rowoldt vs. Perfetto*. The reason for such order holding the Avramovich case in

abeyance was because the two cases were greatly similar in fact and in the applicable law. Both cases were based on the exceptions provided in the case of *Galvan vs. Press*, 347 U. S. 522. The question involved in both cases was the question of whether a nominal member such as Rowoldt and Avramovich came within the purview of the law providing for deportation of aliens belonging to the Communist Party. The facts are so similar that Counsel desires to set forth herein the great similarity of the two cases, and certainly the same law and reasoning apply to both of them.

It is suggested here that the only reason for holding the case in abeyance was because of such great similarity and the same applicable law, and yet a few days before the denial of the Petition for Certiorari in Avramovich, the Court's opinion reversing the *Rowoldt* case sets forth the very same facts that are found in this Avramovich case, and in which, this Court denied the petition for Certiorari.

Here are the similarities of the two cases:

	Rowoldt	**Avramovich**
1.	About 74 years old.	About 67 years old
2.	Resident of the U. S. for 40 some years.	Resident of the U. S. for 44 years.
3.	Married and has children and grandchildren.	Married and has children and grandchildren.
4.	Never has been convicted of a crime.	Never has been convicted of a crime.
5.	Legal resident of the U. S.	Legal resident of the U. S
6.	Membership in the Communist Party admitted.	Membership in the Communist Party admitted.
7.	Held no office in the Communist Party.	Held no office in the Communist Party.
8.	Was a member of the I.W.O. and held minor office therein.	Was a member of the I.W.O and held minor office therein.
9.	Was a member for a year or two in the Communist Party.	Was a member for several years in the Communist Party.

	Rowoldt	Avramovich
10.	Resigned from the Party when he was arrested for deportation.	Resigned from the Party when he attempted to obtain citizenship.
11.	Claimed a lack of the necessities of life caused him to join, and, as he said, in a fight for bread and food.	Claimed he had to join because of lack of necessities of life. Could not pay rent, and had to live in a room back of his store with his family during the depression.
12.	Claimed to be a nominal member although admits running book store for the Communist Party.	Claimed to be a nominal member; was not active in any way for the Communist Party.
13.	Membership was established by alien's own testimony.	Membership was established by alien's own testimony. There was no other testimony in the case.
14.	He claimed that he never advocated change of government by force, and his testimony stood unchallenged.	He claimed that he never advocated change of government by force, and his testimony stood unchallenged.

A glance at the statement of facts describing the conditions existing at the time of this Petitioner's joining up with the Communist Party of Akron establishes that such joining was an act of desperation because, as he stated in the record, while his family was going hungry, he saw his customers carrying shoes to be repaired to another shoe repair shop and he was told by them that they were taking their business to their friends and members of their organization.

In joining up with this organization, it was not just a case of attempting to better his economic situation. It was a question of attempting to survive, attempting to obtain food and a roof over his head during a terrible depression that was existing at that time. As he stated, he joined the organization because he was in the hopes of more W. P. A. jobs and more relief for himself and his family. Such a joining was, of course, not for any political purposes or any

idealism; it is a plain matter of fact that the man and his family were practically starving and could not pay rent, and had to move into the rooms behind the shoe repair store to continue to exist.

We must call to this Court's attention that the opinion in the *Rowoldt* case which was released by this Court on the 9th day of December 1957, fits our case like a glove. It also fits the *Rowoldt* case in the same manner. Such appraisal of the opinion is not only mine. That the two cases are alike was also the opinion of the Solicitor-General of the United States when he filed his Brief in opposition to my Petition for Certiorari, where, in 1956, he suggests to this Court in his brief (last page) that:

> "The Court, however, may wish to defer action on the Petition until after it has rendered its decision in Rowoldt vs. Perfetto."

Of course, the Solicitor-General immediately saw the factual situation in both cases as being alike, and of course the applicable law would have to be the same, and it is only for that reason that he suggested to the Court that Avramovich be held until after the *Rowoldt* decision. This Court then complied.

We, on the other hand, did not object to it because we also knew that the two cases are as alike as two peas in a pod, and we also felt that whatever the opinion in the *Rowoldt* case would also decide the Avramovich case. Therefore we were greatly shocked and disturbed when notice was received that the petition for Certiorari in Avramovich was denied, and a re-reading of the opinion in the *Rowoldt* case indicates that probably an error was committed in the decision denying the petition for Certiorari in Avramovich.

Without attempting to detract from the merits of the *Rowoldt* case it is only fair that we do call the Court's

attention to the fact that Rowoldt had a greater experience and a greater involvement with Communism than Avramovich. After all, he was a salesman for the Communist Party either in charge of or working in a regular bookstore strictly dealing with communist literature. Also, in his discussion of communism, Rowoldt indicates a little wider knowledge of the workings of the Party than Avramovich could possibly have.

Our puzzlement should be understandable because it is true that not only the same or similar facts are contained in both cases, but also the same law and practically the same arguments and the same citations.

We also desire to call this Court's attention to the similarity of the purposes for joining the Communist Party as given by Rowoldt as set forth on page 148 of this Court's opinion and reads as follows:

> "The purpose was probably this—it seemed to me that it came hand in hand—the Communist Party and the fight for bread. It seemed to me like this—let's put it this way—that the Communist Party and the Workers' Alliance had one aim—to get something to eat for the people. I didn't know it was against the law for aliens to join the Communist Party and the Workers' Alliance * * *."

and also the statement of the purpose for joining as given by Avramovich which is on page 9 of the Petition for a Writ of Certiorari.

"Excerpt from Hearing, August 9, 1950:

> The *Galvan vs. Press* opinion came down in 1954. The hearings in this Avramovich case began in January 1950, four and one-half years before the opinion in the Galvan case. In the hearing of August 9th, 1950, undersigned counsel was examining the appellant on the question of the circumstances surrounding his joining this particular Communist Party of Akron,

and his reason for joining that organization. On page 20 of the record covering that hearing, the original of which is in the file before this Court, the following sworn testimony was given:

"Q. How many people did you know there at the time you joined?

A. I didn't know anybody.

Q. Did anyone know you? You said you were introduced?

A. They knew me from the people, and they knew several people who were in my store.

Q. You mean customers?

A. Yes, sir.

Q. Was it your customers who asked you to join?

A. Yes, that's how I became acquainted with them.

Q Did you know the ideology or the Constitution of the Communist Party when you joined?

A. No.

Q. Did anyone explain it to you?

A. No.

Q. At that time, when you joined, what was the purpose of your joining that organization?

A. Well, the main purpose, as I recall—as I have been thinking about it, was to get friends and try to get some help.

Q. What kind of help?

A. Financial, business help as I was living in a store and there was no business, naturally I accepted anything to make my living. Since the Communist Party were showing themselves as friends, I figured it would be a help to me.' "

From a reading of the testimony in both cases, it certainly appears that neither man joined the party for the purpose of overthrowing the Government of the United States by force, and it is very plain that both men joined the party out of necessity, Rowoldt for a job that he got and Avramovich to make friends and to keep his customers

from going to another shoe repair man, so that he could continue to live and exist during the years of depression, when they respectively joined up with the Party.

All in all, we cannot be mistaken when we say that those two cases are as two peas in a pod, and that the Solicitor-General was correct in asking this Court to hold this Avramovich case in abeyance until the *Rowoldt* decision, and that it appears from all of the circumstances here that an error was committed when the Petition for Certiorari in the Avramovich case was denied.

CONCLUSION.

For the foregoing reasons and to prevent a miscarriage of justice, this Court is respectfully urged to grant a rehearing at this time, and to set aside the Order of Denial of the Petition for Certiorari, and to reinstate this case, and to admit this case for Hearing before the Court, or in the alternative to admit the Petition for Certiorari and to order this Petitioner released and discharged from custody on the authority of *Rowoldt vs. Perfetto*.

HENRY C. LAVINE,
1000 Marshall Building,
Cleveland 13, Ohio,
Attorney for Petitioner.

Certificate of Counsel.

I, the undersigned counsel for the Appellant in the above-entitled cause, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

HENRY C. LAVINE,
Attorney for Petitioner.